

### **REMARKS**

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1 and 8 remain pending. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

#### ***Interview Summary***

Applicants appreciate the time afforded by the Examiner and her supervisor in conducting the Interview on July 24, 2009. Although no agreement was reached, the Examiner's supervisor requested that Applicants submit their arguments on the record in an after-final request for reconsideration. The Examiner and her supervisor will then consider whether the currently-applied rejection is deficient, requiring that prosecution be reopened for further search and/or consideration of the prior art.

#### ***Claim Rejections - 35 U.S.C. §103(a)***

Claims 1 and 8 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Publication No. 2002/0122585 to Swift et al. ("Swift") in view of U.S. Patent No. 6,084,978 to Taylor et al. ("Taylor") and U.S. Patent No. 6,023,277 to Osaka et al. ("Osaka").

Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and traverse the rejection.

For a 35 U.S.C. § 103 rejection to be proper, a *prima facie* case of obviousness must be established. *See M.P.E.P. 2142*. One requirement to establish *prima facie* case of obviousness is that the prior art references, when combined, must teach or suggest all claim limitations. *See M.P.E.P. 2142; M.P.E.P. 706.02(j)*. Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

The Swift reference is directed to a stereoscopic 3-D media file for delivering stereoscopic media in electronic form. Swift discloses providing a single format to represent the stereoscopic media, including support for delivering the media in a monoscopic 2-D viewing mode. *See Swift, paragraph 6 and Figure 1*. Swift's media format indicates which viewing

mode is to be used to display the three-dimensional image information on a screen. *See Swift, paragraph 54 and Figure 10.*

The Examiner concedes that Swift does not disclose a deciding unit for deciding the file name of the image file and the directory for storing the image file, or using the same file name and different extensions for a two-dimensional image file and a three-dimensional image file created based on the same plurality of view point images. *See Office Action, page 3, last paragraph.* The Examiner relies on Taylor to allegedly cure this deficiency of Swift.

Taylor appears generally directed to hierarchical storage and display of digital images, and discloses linking images through an appropriate directory structure to facilitate retrieval. *See Taylor, column 3, lines 61-65.* The Examiner relies upon this disclosure of Taylor to allegedly obviate a deciding unit that decides a filename of an image file and a directory under which the image file is to be stored.

However, the Examiner concedes that Swift in view of Taylor still fails to teach or suggest a deciding unit which “*decides the file name and the directory in such a manner that if a two-dimensional image file and a three-dimensional image file are created based on the same plurality of viewpoint images, then the two-dimensional image file and the three-dimensional image file have the same file name and different extensions, and the two-dimensional image file and three image file created in the file creating means are stored in a common directory together, or one of the two-dimensional image file and three-dimensional image file created in the file creating means is stored in one directory and the other image file is stored in another directory that is under said one directory*”, as recited in independent claim 1.

The Examiner relies on the Osaka reference to allegedly teach creating different extensions for the same file name based on whether the image file relates to a two-dimensional or a three-dimensional image file. *See Office Action, page 5, paragraph 2.* Osaka discloses a three-dimensional image file 50 that includes a file header 51 representing the attributes of the image file. *See Figure 12.* Osaka teaches that the information in the header includes data specific to the three-dimensional image, such as whether or not a three-dimensional image is to be displayed or whether a two-dimensional image is present. *See column 16, lines 4-28.* The Examiner relies on Osaka’s apparent disclosure that the file name of the image data may be

provided with an extension that clarifies a file having three-dimensional image data. *See column 16, lines 37-44.*

However, Osaka fails to teach or suggest that if a two-dimensional image file and a three-dimensional image file are created based on the same plurality of images, then the two-dimensional and three-dimensional image files have the same file name with different extensions. For example, Figure 12 of Osaka shows a three-dimensional image file 50 that includes a file header 51, three-dimensional image data 52, and two-dimensional image data 53 (also described in column 16, lines 4-44). In other words, file header 51, three-dimensional image data 52, and two-dimensional image data 53 are expressly described by Osaka as being included in three-dimensional image file 50. Osaka then goes on to state, “in order to clarify the file of the image having three-dimensional image data, the file name may be provided with an extension” *See Osaka, col. 16, lines 37-44.* This recited filename clearly refers to the three-dimensional image file 50 discussed in the preceding paragraphs. At best, Osaka merely suggests that it is possible to use an extension to distinguish a file that contains 3-D image data, such as the three-dimensional image file 50 containing both 3-D data and 2-D data, from a file that does not have any 3-D image data at all. There is absolutely no disclosure in Osaka of providing a two-dimensional image file and a three-dimensional image file, both created based on the same plurality of images, with the *same filename and different extensions*, as claimed.

Furthermore, none of Swift, Taylor, or Osaka teach or suggest, alone or in combination, any device, system, or apparatus that causes the aforementioned three-dimensional image file and two-dimensional image file to be created with the same filename and different extensions, or which teaches or suggests that ***“the two-dimensional image file and three-dimensional image file created in the file creating means are stored in a common directory together, or one of the two-dimensional image file and three-dimensional image file created in the file creating means is stored in one directory and the other image file is stored in another directory that is under said one directory”***, as recited in claim 1.

The Examiner expressly concedes this fact in the Final Office Action, stating “the combination of Swift, Taylor, and Osaka does not explicitly disclose that the 2-dimensional image file and the 3-dimensional image file created in the file creating means are stored in a

common directory together”. *See Office Action, page 5, paragraph 2.* To supposedly cure this conceded deficiency of the references, the Examiner generally alleges that it would be obvious to store the files together when the image files represent the same set of images “because it is well known in the art of electronic file management that is advantageous to group files with similar properties in a common directory.” *See again, page 5, paragraph 2.* However, the Examiner provides no reference or teaching of this general allegation. The general allegations of the Examiner appear comparable to an assertion of Official Notice, but the Examiner fails to indicate that she is relying upon Official Notice to cure the deficiencies of the references.

MPEP § 2144.03(A) states, “Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While ‘official notice’ may be relied upon, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” (Emphasis added.)

In this instance, the Examiner’s general allegation that it is known to store files with similar properties in a common directory raises a substantial question regarding what level of similarity between the files equates to an “advantageous” storage within a common directory, especially within the context of image file creation and storage. In other words, it is completely unclear from the record what level of similarity between the files one of ordinary skill in the art would consider necessary for there to be an advantage to storing said files in a common directory. Applicants submit that this nebulous level of similarity is **not** capable of instant and unquestionable demonstration without support by documentary evidence within the prior art.

Additionally, as previously demonstrated, the features of the file creating unit and deciding unit of the claimed invention have not been sufficiently obviated by the combination of prior art relied upon by the Examiner, especially in light of the Examiner’s conclusory statement that certain features of the claim are advantageous without documentary support in the prior art. MPEP § 2143 states, “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious... [R]ejections

on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Applicants respectfully submit that the Examiner has failed to meet this standard.

The Examiner’s allegations that the combination of Swift, Taylor, and Osaka obviate all of the recited limitations of an image file creating apparatus with the recited features of the claimed invention are insufficiently supported by the prior art of record. Accordingly, independent claim 1 is distinguishable from the prior art. Dependent claim 8 is also distinguishable from the prior art at least due to its dependence from claim 1.

Applicants respectfully request that the rejection of claims 1 and 8 under 35 U.S.C. § 103(a) be withdrawn.

### **CONCLUSION**

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders (Reg. No. 60,166) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

Michael R. Cammarata

Registration No.: 39,491

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant